

<< 0042862 >>

OCT. -15' 03(WED) 15:25 SENATOR MARY LANDRIEU TEL:202 228 0783 P. 02

MARY L LANDRIEU
LOUISIANA

United States Senate

WASHINGTON, DC 20510-1804

October 10, 2003

The Honorable John W. Snow
Secretary
United States Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Snow:

I am writing to comment on the Alcohol and Tobacco Tax and Trade Bureau (TTB) Notice 4, Flavored Malt Beverages (FMB) and Related Proposals, and to urge the Bureau not to impose a 90/10 formulation standard on FMBs, but rather to adopt a majority standard (5 1/49) that would achieve the Bureau's goals while minimizing the adverse impact of this rule change on the FMB industry.

As I expressed previously in a letter to you (Dated: March 18, 2003), I am concerned that the proposed FMB standards (specifically the 90/10 proposal) would retroactively penalize those who have relied on longstanding TTB policies. The decades-old law that regulates beer, wine and distilled spirits was most recently re-examined in 1996. At that time, the Bureau set a standard for flavor content in FMBs that contained more than 6% alcohol by volume in the finished product. Although this ruling contemplated a rulemaking on the use of flavors in FMBs with alcohol by volume of less than 6%, no such proposal appeared until this year.

In the intervening 7-year time period, manufacturers have relied on the existing law and the Bureau's formula approvals to invest hundreds of millions of dollars in the formulation and marketing of new products. These investments have created hundreds of jobs and a vibrant fast-growing U.S. market sector in which tens of millions of cases of FMBs have already been sold. Without a reasonable public health or safety rationale, it does not seem prudent or fair to revise these rules dramatically at this stage of the game.

Importantly, TTB has offered no compelling public policy rationale for why the formulation of these products needs to be altered in this drastic way. With or without the proposed changes, FMBs will contain no more alcohol than beer; and the alcohol content in FMBs and beer will have identical effects upon those who consume the beverages. Moreover, it is not clear how this rule would reduce underage drinking. Earlier this year Congress directed the Federal Trade Commission (FTC) to study the impact on underage consumers of the expansion of new advertisements for FMI3s, and the FTC recently found that FlvtB producers do not market to youth. (See Federal Trade Commission, Alcohol Marketing and Advertising: A Report to

<< 0042862A >>

-15' 03(WED) 15:25 SENATOR MARY LANDRIEU TEL:202 228 0783 P. 003

Congress. Sept. 2003, at p.22). In short, the potential change is not supported by scientific principles; and no material health or safety purpose would be served. Moreover, the expense of this change is not justified by any reasonable cost-benefit analysis. Without these supporting rationale, TTB's proposed rule changes must be reviewed with the utmost scrutiny.

It is clear that if TTB were to go as far as adopting the 90/10 standard contemplated in the proposed rule, it would likely change the taste and character of FMBs -- products which have attained broad consumer loyalty. There is no doubt that this outcome would provide FMBs rivals with a distinct competitive advantage. Without any public policy rationale for these changes, I am sure you would agree that it would be improper for a government agency to intervene in the marketplace in this way.

The above mentioned arguments show that a formulation standard which requires 90 percent of the alcohol in FMBs to come from a malt base would be overly costly, harmful to the product, and -- most importantly -- produce little public benefit. As TTB has stated, it welcomes comments on a formulation standard that does not reach the 90 percent threshold if it is "consistent with the FAA definition of malt beverage, such as requiring that the alcohol content of a malt beverage be 'predominantly; i.e. at least 51% derived from fermentation at the brewery.'" (See TTB Proposed Rule at 68 Fed. Reg. 14296). Setting a 51/49 majority standard would accomplish the same goals and have a lesser impact on these products and the industry that produces them.

I hope that TTB will heed these concerns and consider choosing the majority standard when crafting its final rule. In addition, regardless of the formulation standard chosen, the industry must be given an ample amount of time, not less than 18 months, to transition into a new formulation standard.

With warmest regards, I am

Sincerely,

United States Senator

Mary L. Landrieu
United States Senator